

Decision 16-12-005 December 1, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the California High-Speed Rail Authority to construct proposed high-speed tracks and grade separations at Avenue 7 (MP 180.27); Avenue 8 (MP 179.08); Avenue 9 (MP 177.94); Avenue 10 (MP 176.85); Avenue 11 (MP 175.82); and Avenue 12 HST (MP 174.81) within the County of Madera, California.

Application 16-01-013
(Filed January 28, 2016)

DECISION GRANTING AUTHORIZATION TO THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY TO CONSTRUCT HIGH-SPEED RAIL TRACKS AND GRADE-SEPARATED HIGHWAY-RAIL CROSSINGS AT AVENUE 7 , AVENUE 8, AVENUE 9, AVENUE 10, AVENUE 11, AND AVENUE 12 HST WITHIN THE COUNTY OF MADERA

Summary

This decision grants the California High-Speed Rail Authority authorization to construct two at-grade high-speed rail mainline tracks and overpass grade-separated highway-rail crossings at Avenue 7, Avenue 8, Avenue 9, Avenue 10, Avenue 11, and Avenue 12 HST in unincorporated areas of Madera County. All six grade separated highway-rail crossings will be constructed over two at-grade high-speed rail tracks along the California High-Speed Train System. The overpasses will be a part of the California High-Speed Train Project Construction Package 1, which is the first construction package of the California High-Speed Train System. The new grade-separated highway-rail crossings will be identified as follows:

Avenue 7 (California Public Utilities Crossing Number 135S-180.27-A and United States Department of Transportation Number 968513A);

Avenue 8 (California Public Utilities Crossing Number 135S-179.08-A and United States Department of Transportation Number 968512T);

Avenue 9 (California Public Utilities Crossing Number 135S-177.94-A and United States Department of Transportation Number 968511L);

Avenue 10 (California Public Utilities Crossing Number 135S-176.85-A and United States Department of Transportation Number 968502M);

Avenue 11 (California Public Utilities Crossing Number 135S-175.82-A and United States Department of Transportation Number 968501F); and

Avenue 12 (California Public Utilities Crossing Number 135S-174.81-A and United States Department of Transportation Number 968500Y).

This proceeding is closed.

Discussion

The California High-Speed Rail Authority (CHSRA), in cooperation with the County of Madera (County), proposes to construct two California High-Speed Train System (CHSTS) mainline tracks and overpass grade-separated highway-rail crossings (crossings) at Avenue 7, Avenue 8, Avenue 9, Avenue 10, Avenue 11, and Avenue 12 located in unincorporated areas of the County. All six overpass crossings will be constructed over two at-grade mainline high-speed tracks along the CHSTS. The Avenue 12 HST in CHSRA's application refers to the overpass at Avenue 12 proposed for construction specifically over the high-speed rail tracks. CHSRA will build another crossing overpass at Avenue 12, which will cross over BNSF Railway tracks running parallel to the high-speed tracks.

The CHSTS mile post, California Public Utilities Commission (CPUC/Commission) crossing number, and United States of Department

Transportation (DOT) number for the six proposed crossings are listed below. These crossings will be located along the CHSTS Sierra Subdivision.

Crossing Name	Mile Post	CPUC Crossing Number	DOT Number
Avenue 7	180.27	135S-180.27-A	968 513A
Avenue 8	179.08	135S-179.08-A	968 512T
Avenue 9	177.94	135S-177.94-A	968 511L
Avenue 10	176.85	135S-176.85-A	968 502M
Avenue 11	175.82	135S-175.82-A	968 501F
Avenue 12 HST	174.81	135S-174.81-A	968 500Y

All six crossings are a part of the California High-Speed Train (CHST) Project Construction Package 1 (CP1 Project), which is the first construction package of the CHSTS. The CP1 Project limits begin in the County in the north, extend south through the City of Fresno, and then into unincorporated areas of Fresno County. The CP1 Project length is approximately 30 miles and consists of two CHSTS mainline tracks, generally aligned in a north-south direction. The CP1 Project scope includes the design and construction of the structures and track roadbeds of nearly 50 crossings. No new at-grade crossings are proposed for the CP1 Project.

Along with being part of the CP1 Project, the crossings are also a part of the Merced to Fresno Section of the CHSTS. The Merced to Fresno Section, located in the California Central Valley, was identified by the CHSRA as one of the highest construction priorities of the CHSTS. Overall, the CHSTS is being planned to provide intercity, high-speed rail service on more than 800 miles of track throughout California, connecting with the state's existing transportation network and major population centers of Sacramento, San Francisco Bay Area, Central Valley, Los Angeles, Inland Empire, Orange County, and San Diego.

The CHSRA, created by state statutory mandate, is responsible for planning, designing, constructing, and operating the CHSTS.

After completion of all phases of construction of the CHSTS, it is anticipated that the crossings may be frequented by 200 trains per day. CHSRA will employ the following features at each of the six crossings:

- Compliance with all minimum clearance requirements set forth in Commission General Order (GO) 26-D.
- Compliance with project design drawing requirements for minimum vertical and horizontal clearances.
- Two high-speed rail tracks located at-grade below the overpass.
- No railroad tracks will be crossed other than the two high-speed rail tracks.
- Welded wire mesh fencing located along the right-of-way of the tracks.
- An overhead catenary system, supplying energy to the rail vehicles, that will comply with the requirements of GOs 26-D, 95, 128, and 176.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (as amended, Public Resources Code Section 21000, et seq.) (CEQA) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the projects are subject to CEQA and the Commission must issue a discretionary decision in order for the projects to proceed (i.e., the Commission has the exclusive authority to approve the projects pursuant to Section 1202 of the Public Utilities

Code), the Commission must consider the environmental consequences of the projects by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out a project,¹ or the one with the greatest responsibility for supervising or approving a project as a whole.² Here, the CHSRA is the lead agency for these projects under CEQA because it intends to construct the proposed crossings. The Commission is a responsible agency because it has jurisdiction to issue a permit for the construction of the proposed crossings.

As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving these projects.³ Also, as a responsible agency, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the projects which it decides to carry out, finance, or approve.⁴

Pursuant to CEQA and the National Environmental Policy Act (NEPA),⁵ the CHSRA and the Federal Railroad Administration (FRA) prepared the environmental documentation titled, *California High-Speed Train, Final Project Environmental Impact Report/ Environmental Impact Statement, Merced to Fresno*

¹ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

³ CEQA Guidelines, Sections 15050(b) and 15096.

⁴ CEQA Guideline Section 15096(g).

⁵ 42 USC 4332 (2) (c) of 1969 as amended. Projects undertaken in California that utilize federal funds, require discretionary federal approval, or are undertaken by federal agencies are subject to both NEPA and CEQA.

Section, Project EIR/EIS (Final EIR/EIS), approved April 2012, which identifies environmental impacts and associated mitigation measures related to the construction of the CHST Merced to Fresno Section Project (Project), which these proposed crossings are a part. The Final EIR/EIS identifies several significant impacts on the environment due to the overall construction of the Project.

On May 3, 2012, the CHSRA filed a Notice of Determination (NOD) as required by CEQA. In the CHSRA's NOD, it determined that the Project will have a significant effect on the environment, mitigation measures would be made a condition for Project approval, and a Statement of Overriding Considerations (SOC) would be adopted for the Project.

The SOC found that construction of the Project will result in certain significant adverse impacts which will not be substantially lessened or avoided even with the adoption of all feasible mitigation measures or alternatives. The specific impacts subject to these overriding considerations include noise and farmland/agricultural land impacts. Despite these impacts, the CHSRA chose to approve the Project, because in its view, the economic, social, technological, legal, and other benefits of the Project outweigh the unavoidable adverse environmental effects. Based on these views, the CHSRA adopted the SOC in order to approve the Project, pursuant to CEQA.

The FRA issued a Record of Decision (ROD) on the Final EIR/EIS for the Project on September 18, 2012. In this ROD, FRA agrees with the purposes, needs, and objectives of this Project, and finds that it has been selected in compliance with NEPA and other applicable requirements.

The Commission reviewed and considered the Project's Final EIR/EIS, the CHSRA's NOD and SOC, and the FRA's ROD as these documents relate to all

six overpass grade-separated crossings and finds these documents adequate for our decision-making purposes.

Environmental impacts related to the rail crossings, which may include, for instance, noise, air quality, aesthetics, transportation, and safety impacts are within the scope of the Commission's permitting process.

The noise generated by the operation of high-speed trains is expected to increase the noise levels in the areas surrounding the proposed crossings; however, all six crossings are in rural, agricultural, sparsely populated areas, therefore, no soundwalls are being proposed. In other Project areas, such as in some urban areas and other areas adjacent to high-speed train stations, the increase in noise levels caused by the operation of high-speed rail trains combined with other noise generators may be potentially significant. In order to reduce noise impacts as much as possible in these high noise areas, as part of the Project, CHSRA will install noise barriers in the form of soundwalls or berms, and recommend that builders install building insulation in the design for homes or businesses that are within certain distances from high-speed rail crossings.

During construction of the crossings, project construction noise may occasionally reach levels considered potentially significant; however, this impact would be short-term and only occur during active construction. CHSRA will implement mitigation measures that will reduce such impacts to less than significant which include:

- Installing a temporary construction site sound barrier near a noise source;
- Avoiding nighttime construction;
- Using low-noise emission equipment;

- Locating stationary construction equipment as far as possible from noise-sensitive areas;
- Using acoustic enclosures, shields, or shrouds for equipment and facilities;
- Using high-grade engine exhaust silencers and engine-casing sound insulation; and
- When pile driving, using an auger to install the piles instead of a pile driver will reduce noise levels substantially. If pile driving is necessary, limit the time of day that the activity can occur.

The above-mentioned mitigation measures may also be used in some other Project areas during construction activity. As is true in the proposed crossing areas, construction noise in other Project areas may occasionally reach levels considered potentially significant; however, this impact would normally be short-term as well and only occur during active construction.

During the construction phase of the proposed crossings and other Project areas, relevant air quality standards for VOC, NO_x, PM₁₀ and PM_{2.5} may be periodically violated. CHSRA will implement mitigation measures that will reduce such impacts to less than significant which include:

- Employing dust control practices;
- Limiting pollutant emissions from construction equipment exhaust; and
- Instituting a Dust Control Plan that will meet relevant air quality requirements.

As noted earlier, the location of the proposed crossings are in rural, agricultural, sparsely populated areas. The Final EIR/EIS does not specifically state the measures that will be taken to improve the aesthetic quality at the

proposed crossings; however, the CHSRA does note that in many Project areas where construction activities may create adverse visual changes from demolition, vegetation removal, construction staging areas, or construction work in general, CHSRA will implement mitigation measures to reduce the impact of such adverse visual changes. CHSRA will adopt mitigation measures to reduce these impacts to less than significant which include:

- Preserving vegetation or landscaping along the right-of-way to screen views of the roadway structures;
- Including architectural elements into the design of the roadway structures to improve beautification; and
- Providing landscaping that helps shield grade-separated structures at locations most visible to nearby residents.

Even with the implementation of mitigation measures, visual impacts from construction will remain cumulatively considerable under CEQA for some Project areas.

The proposed crossings as a part of the Project will benefit the regional transportation system by diverting intercity trips from the regional roadway system and commercial air flights to high-speed rail. Diverting trips to high-speed rail will reduce the overall number of vehicle trips on the regional roadway system, improve future levels of service, and reduce overall vehicle miles traveled. In some Project areas, there will be traffic impacts in congested urban areas caused by the realignment of State Route 99 in Fresno, increased traffic around CHSTS stations, detours during construction, and road closures. CHSRA will implement traffic mitigation measures to reduce traffic impacts which will include signage that warns motorists of road closures and detours, modification of traffic signals, widening of lanes, adding lanes, and restriping.

The proposed crossings as a part of the Project, operating on a fully grade separated, dedicated track alignment, and using contemporary safety, signaling, and automated train control systems, will provide a safe and reliable means of intercity travel. The design of the system will avoid conflicts with existing rail systems, pedestrians, and bicyclists. Overall, the Project will provide a safety benefit. The Project will also improve safety where existing at-grade crossings are replaced with grade-separated crossings, resulting in a beneficial effect on safety at crossings in local communities.

Filing Requirements and Staff Recommendations

This application is in compliance with the Commission's filing requirements, including Rule 3.7 of Rules of Practice and Procedure, which relates to the construction of a public highway across a railroad.

The CP1 Project scope includes the design and construction of structures and track beds for nearly 50 crossings. In order to complete construction at the six proposed crossings and all of the other crossings along the length of the CP1 Project, the CHSRA anticipates issuing a separate contract (from the contract for the structures and track bed work) to lay the tracks and install the overhead contact system. CHSRA anticipates that the construction of the CP1 Project and the future track and overhead contact system work will not be completed within the standard three-year authorization period; however, it is likely to be completed within six years. As such, CHSRA requests that the Commission grant it the authority to construct the crossings for a period of six years instead of the standard three years. CHSRA points out that this extended authorization period will prevent both CHSRA and CPUC Staff from having to prepare and process requests for crossing extensions. The Commission finds CHSRA's rationale reasonable and grants the extended six-year authorization period.

The Commission's Safety and Enforcement Division – Rail Crossings and Engineering Branch has inspected the site of the crossings, reviewed and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject crossings be granted for a period of six years.

Categorization and Need for Hearings

In Resolution ALJ 176-3372 dated February 11, 2016, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g) (2) of the Public Utilities Code and Rule 14.6(c) (2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Elizaveta I. Malashenko is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on February 1, 2016.
2. The CHSRA requests authority, under Public Utilities Code Sections 1201-1205, to construct two high-speed mainline tracks and overpass grade-separated

crossings at Avenue 7, Avenue 8, Avenue 9, Avenue 10, Avenue 11, and Avenue 12 HST in the County. The six crossings will be identified as follows:

Avenue 7 (CPUC Crossing No. 135S-180.27-A and DOT No. 968513A);
Avenue 8 (CPUC Crossing No. 135S-179.08-A and DOT No. 968512T);
Avenue 9 (CPUC Crossing No. 135S-177.94-A and DOT No. 968511L);
Avenue 10 (CPUC Crossing No. 135S-176.85-A and DOT No. 968502M);
Avenue 11 (CPUC Crossing Number 135S-175.82-A and DOT No. 968501F);
and Avenue 12 (CPUC Crossing No. 135S-174.81-A and DOT No. 968500Y).

3. The six crossings will be constructed above two mainline high-speed rail tracks constructed at-grade along the CHSTS.

4. The six crossings will comply with all minimum clearance requirements set forth in Commission GO 26-D.

5. The CHSRA is the lead agency for these projects under CEQA, as amended.

6. The CHSRA and FRA prepared, pursuant to CEQA and NEPA, a Final EIR/EIS approved in April 2012.

7. Pursuant to NEPA, FRA issued a ROD on September 18, 2012.

8. Pursuant to CEQA, the CHSRA prepared a NOD, filed on May 3, 2012, and adopted an SOC in approving these projects.

9. The Commission is a responsible agency for these projects and has reviewed and considered the lead agency's Final EIR/EIS, NOD, and SOC.

10. In the environmental documents, it has been determined that the overall Project, of which these proposed overpass grade-separated crossings are a part, will have a significant effect on the environment.

11. During the construction of the crossings, CHSRA will address potentially significant impacts by mitigation measures to reduce their severity to below significant levels.

12. Mitigation measures to reduce noise impacts during construction include installing temporary construction site sound barriers, avoiding nighttime construction, using low-noise emission equipment, locating stationary construction equipment as far as possible from noise-sensitive areas, using acoustic enclosures, shields, or shrouds for equipment and facilities, using high-grade engine exhaust silencers and engine-casing sound insulation, and when pile driving, using an auger to install the piles instead of a pile driver, or limiting the time of day that pile driving occurs.

13. Mitigation measures to reduce air quality impacts during construction include employing dust control practices, limiting pollutant emissions from construction equipment exhaust, and instituting a Dust Control Plan that will meet relevant air quality requirements.

14. Mitigation measures to reduce aesthetic impacts include preserving vegetation or landscaping along the right-of-way to screen views of the roadway structures, including architectural elements into the design of the roadway structures to improve beautification, and providing landscaping that helps shield grade-separated structures at locations most visible to nearby residents.

15. The crossings as a part of the Project will benefit the regional transportation system by diverting intercity trips from the regional roadway system and commercial air flights to high-speed rail.

16. The crossings as a part of the Project, operating on a fully grade separated, dedicated track alignment, and using contemporary safety, signaling, and

automated train control systems, will provide a safe and reliable means of intercity travel.

17. The Project will also improve safety where existing at-grade crossings are replaced with grade-separated crossings, resulting in a beneficial effect on safety at highway-rail crossings in local communities.

Conclusions of Law

1. Environmental impacts related to the rail crossings, which may include, for instance, noise, air quality, aesthetics, transportation, and safety impacts are within the scope of the Commission's permitting process.

2. The Commission is a responsible agency for these projects and has reviewed and considered the lead agency's Final EIR/EIS, NOD, SOC, and ROD.

3. The Final EIR/EIS, NOD, SOC, and ROD are adequate for our decision-making purposes.

4. The Final EIR/EIS, NOD, SOC, and ROD were completed in compliance with CEQA.

5. The Final EIR/EIS, NOD, SOC, and ROD reflect the Commission's independent judgement and analysis.

6. The Final EIR/EIS, NOD, SOC, and ROD did not identify any unmitigated significant impacts relating to the construction of the proposed crossings.

7. The application is uncontested and a public hearing is not necessary.

8. The application should be granted as set forth in the following Order.

9. Application 16-01-013 should be closed.

O R D E R

IT IS ORDERED that:

1. The California High-Speed Rail Authority is authorized to construct two high-speed rail tracks and overpass grade-separated highway-rail crossings at Avenue 7, Avenue 8, Avenue 9, Avenue 10, Avenue 11, and Avenue 12 HST in the County of Madera. The new overpass grade-separated highway-rail crossings shall be identified as follows:

Avenue 7 (California Public Utilities Crossing Number 135S-180.27-A and United States Department of Transportation Number 968513A);

Avenue 8 (California Public Utilities Crossing Number 135S-179.08-A and United States Department of Transportation Number 968512T);

Avenue 9 (California Public Utilities Crossing Number 135S-177.94-A and United States Department of Transportation Number 968511L);

Avenue 10 (California Public Utilities Crossing Number 135S-176.85-A and United States Department of Transportation Number 968502M);

Avenue 11 (California Public Utilities Crossing Number 135S-175.82-A and United States Department of Transportation Number 968501F); and

Avenue 12 (California Public Utilities Crossing Number 135S-174.81-A and United States Department of Transportation Number 968500Y).

2. The overpass grade-separated highway-rail crossings shall have the crossing features and configuration described above and specified in the California High-Speed Rail Authority's application and its attachments and addendum.

3. The California High-Speed Rail Authority shall notify the California Public Utilities Commission's Safety and Enforcement Division – Rail Crossings and Engineering Branch at least five business days prior to opening the overpass

grade-separated highway-rail crossings. Notification should be made to rceb@cpuc.ca.gov.

4. Within 30 days after completion of the work for each highway-rail crossing under this order, the California High-Speed Rail Authority shall notify the Rail Crossings and Engineering Branch in writing, by submitting a completed California Public Utilities Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion of the authorized work. Form G requirements and forms can be obtained at the California Public Utilities Commission's web site at <http://www.cpuc.ca.gov/Crossings>. This report may be submitted electronically to rceb@cpuc.ca.gov.

5. Within 30 days after completion of the work under this order, the California High-Speed Rail Authority shall notify the Federal Railroad Administration of the existence of the roadway over track crossings by submitting a United States Department of Transportation CROSSING INVENTORY FORM, form FRA F6180.71 for each highway-rail crossing. Concurrently, the California High-Speed Authority shall provide a copy of the inventory forms to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch. A copy of the forms may be submitted electronically to rceb@cpuc.ca.gov.

6. The California High-Speed Rail Authority shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

7. This authorization shall expire if not exercised within six years (72 months) unless time is extended or if the above conditions are not satisfied. The

California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.

8. A request for extension of the six-year period must be submitted to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least 30 days before the expiration of that period for any highway-rail crossing that is not expected to be completed within the six-year period. A copy of the request must be sent to all interested parties.

9. The application is granted as set forth above.

10. Application 16-01-013 is closed.

This order is effective today.

Dated December 1, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners